



State of Arizona
Department of Education

Tom Horne
Superintendent of
Public Instruction

NSLP CN # 14-08
USDA Memo # SP 09-2008

MEMORANDUM

TO: School Health & Nutrition Program Sponsors

FROM: Mary Szafranski, Deputy Associate Superintendent
Arizona Department of Education, Health and Nutrition Services

Nicholas Dunford, Finance Director
Arizona Department of Education, School Health & Nutrition Programs

DATE: February 25, 2008

SUBJECT: Procurement Requirements for the National School Lunch Program (NSLP), Special Breakfast Program (SBP), and Special Milk Program (SMP)

Original Signed

This memo is to provide key highlights to all Local Educational Agencies (LEA) regarding final ruling on Procurement Requirements from The United States Department of Agriculture (USDA) and how it will affect their procurement process when dealing with NSLP, SBP, and SMP. Details regarding this final ruling were published on October 31, 2007 and can be accessed through this Federal Registry website www.gpoaccess.gov/fr/index.html.

The final rule was driven in part by audits released by the Office of Inspector General which recognized that Food Service Management Companies (FSMC) were improperly receiving purchase discounts and/or USDA donated commodities that were intended to be credited to the LEA's nonprofit school food service account.

The rule explicitly;

- 1) Limits an LEA's use of any **nonprofit school food service account funds** to the costs coming from appropriately procured resources whether goods or services. This rule is not limited to the FSMC, any vendor that invoices and is funded by the nonprofit school food service account must have a valid contract on file with documentation of correct procurement procedures. An example of goods would be the procurement of food, tables, or other kitchen equipment. Procuring a FSMC, janitor, or pest control are examples of a service.

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- 2) Requires that allowable costs, paid from the nonprofit school food service accounts, includes all required deductions. **This is defined as the total cost minus the discounts, rebates, and applicable credits.** One example of a credit that is received by the LEA would be the credit for commodities. The discounts, rebates and applicable credits must be clearly itemized on the invoice. This enables the LEA to approve payment from the nonprofit school food service accounts.
- 3) Requires Arizona Department of Education (ADE) to review and **approve** all procurement documents for **FSMC** services **in advance to contract execution.** Specifically, the final rule requires the LEA receive prior written approval from ADE of Invitations for Bids (IFB) and Requests for Proposals (RFP) for the contracting of a FSMC before their release date. ADE must review and approve the contract terms to ensure the required contract language is in compliance with all State and Federal Codes. These requirements will promote full and open competition in LEA procurement of FSMC services.

ADE and the USDA are aware that some LEA's current contracts do not have the language needed to comply with the above ruling. As a result ADE is requiring all LEA's submit RFP's, contracts, or contract amendments according to the following procedure;

- a) **RFP/Contract** - If the LEA must go out for bid to obtain the services of a FSMC in program year 2008 allowable costs invoicing language is required to be in the RFP and the contract.
- b) **Contract Amendments** – At the expiration of the LEA's current year FSMC contract they will be required to place the allowable cost invoicing language in the amendment.

ADE provides a number of tools for the procurement process in contracting a FSMC. Training is available to assist the LEA in learning portions of the State Procurement Code, District Procurement Code, and Code of Federal Regulations (CFR). The LEA will also learn what is required when writing an RFP and a contract for a FSMC while participating in the NSLP, SBP, and SMP. To register please visit our website at:

www.ade.az.gov/online/registration/calendar/RenderCalendar.asp

ADE also provides a FSMC RFP template and a FSMC contract template that incorporate that mandatory requirements defined in the CFR. The templates will be updated to include the USDA requirements regarding net costs invoicing by March 31, 2008. To download a copy, please visit the Health and Nutrition website at:

www.ade.az.gov/health-safety/cnp/nslp/Operating/FSMCsteps.asp

If you have questions or concerns regarding this memo, please contact Kristine Anderson at 602-542-6208 or email at Kristine.Anderson@azed.gov.

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